

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JUDITH MENDOZA,

Plaintiff,

V.

**COSTCO WHOLESALE
CORPORATION,
JIMMY JOHNSON, and
DOES 1-50, inclusive,**

Defendants.

Case No. 8:24-cv-00845-JWH-AJR

**ORDER DENYING PLAINTIFF'S
RENEWED MOTION TO
REMAND [ECF No. 36]**

1 Before the Court is the renewed motion of Plaintiff Judith Mendoza to
2 remand this action to state court.¹ The Court concludes that this matter is
3 appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15.
4 After considering the papers filed in support and opposition,² the Court orders
5 that the Renewed Motion is **DENIED**.

6 **I. BACKGROUND**

7 The parties are familiar with the history of this case. As relevant here, in
8 March 2024, Mendoza commenced this action in Orange County Superior
9 Court against Defendants Costco Wholesale Corporation and Jimmy Johnson.³
10 Mendoza alleged that she slipped and fell while she was shopping at a Costco
11 store in La Habra, California, in May 2022, and she asserted two claims for
12 relief: (1) negligence; and (2) premises liability.⁴

13 In April 2024, Costco removed the action to this Court on the basis of
14 diversity jurisdiction.⁵ In its Notice of Removal, Costco asserted that Jimmy

15 ¹ *See* Pl.’s Mot. to Remand (the “Renewed Motion”) [ECF No. 36].

16 ² Specifically, the Court considered the documents of record in this matter,
17 including the following papers: (1) Def.’s Notice of Removal (the “Notice of
18 Removal”) (including its attachments) [ECF No. 2]; (2) Compl. (the
19 “Complaint”) [ECF No. 2-2]; (3) Pl.’s Mot. to Remand (the “First Motion”)
20 [ECF No. 13]; (4) Def.’s Opp’n to the First Motion (the “First Opposition”)
21 (including its attachments) [ECF No. 18]; (5) Pl.’s Reply in Supp. of the First
22 Motion [ECF No. 21]; (6) Order to Show Cause re Subject Matter Jurisdiction
23 (the “Order to Show Cause”) [ECF No. 23]; (7) Pl.’s Supplement to the First
24 Motion (“Mendoza’s Supplemental Brief”) (including its attachments) [ECF
25 No. 24]; (8) Def.’s Supplement to the First Opposition (“Costco’s
26 Supplemental Brief”) [ECF No. 25]; (9) Renewed Motion; (10) Def.’s Opp’n to
27 the Renewed Motion (the “Opposition”) [ECF No. 40]; and (11) Pl.’s Reply in
28 Supp. of the Renewed Motion (the “Reply”) [ECF No. 41].

³ *See generally* Complaint.

⁴ *Id.*

⁵ *See* Notice of Removal.

1 Johnson is an unknown and apparently fictitious defendant.⁶ To support that
2 assertion, Costco provided a declaration from a payroll clerk, Natalie Trejo, in
3 which Trejo testified that “[t]he La Habra Costco warehouse has never
4 employed any individual by the name of Jimmy Johnson.”⁷

5 Mendoza filed the First Motion in May 2024.⁸ In that motion, Mendoza
6 argued that removal was improper because Jimmy Johnson was the manager of
7 the La Habra Costco, and she maintained that Jimmy Johnson was a properly
8 joined California citizen.⁹ Mendoza asked the Court to award her costs and fees
9 in connection with the improper removal.¹⁰

10 Based upon the dispute over Jimmy Johnson’s identity, the Court ordered
11 the parties to conduct jurisdictional discovery regarding the “true name of
12 ‘Jimmy Johnson,’ his citizenship, and his role in the allegations.”¹¹ The Court
13 also directed the parties to file supplemental briefing on the issues of citizenship
14 and diversity jurisdiction.¹² The Court received that supplemental briefing in
15 August 2024,¹³ and, in January 2025, the Court denied the First Motion.¹⁴

16 Mendoza filed the instant Renewed Motion in August 2025.¹⁵ In the
17 Renewed Motion, Mendoza asserts that in discovery Costco has identified an
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19 ⁶ See *id.* at ¶ 10.

20 ⁷ See Notice of Removal, Ex. D [ECF No. 2-2] ¶ 8.

21 ⁸ See First Motion.

22 ⁹ See *id.*; see also Reply.

23 ¹⁰ See Reply.

24 ¹¹ Order to Show Cause 3:11–14.

25 ¹² *Id.* at 3:21–26.

26 ¹³ See Mendoza’s Supplemental Brief; Costco’s Supplemental Brief.

27 ¹⁴ See Order Denying the First Motion (the “Order”) [ECF No. 27].

28 ¹⁵ See Renewed Motion.

1 employee named Russell Follmer, and Mendoza believes that Follmer was the
2 store manager or employee responsible for supervising the area when Mendoza
3 fell.¹⁶ Mendoza further contends that she amended her Complaint¹⁷ to reflect
4 that Russell Follmer was the true identity of Jimmy Johnson, and she asserts that
5 such amendments prove that Jimmy Johnson was not fraudulently joined.¹⁸
6 Costco opposes the Renewed Motion.¹⁹

7 II. LEGAL STANDARD

8 Federal courts are courts of limited jurisdiction. Accordingly, “[t]hey
9 possess only that power authorized by Constitution and statute.” *Kokkonen v.*
10 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In every federal case, the
11 basis for federal jurisdiction must appear affirmatively from the record. *See*
12 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). “The right of
13 removal is entirely a creature of statute and a suit commenced in a state court
14 must remain there until cause is shown for its transfer under some act of
15 Congress.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (internal
16 quotation marks omitted). When Congress has acted to create a right of
17 removal, those statutes, unless otherwise stated, are strictly construed against
18 removal jurisdiction. *See id.*

19 To remove an action to federal court under 28 U.S.C. § 1441, the
20 removing defendant “must demonstrate that original subject-matter jurisdiction
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22¹⁶ *See id.* at 5:3-12.

23¹⁷ It does not appear that Mendoza succeeded in amending her pleading.
24 Mendoza served on Costco an “Amendment to Complaint” purporting to name
25 Russell Follmer as DOE 2, *see id.*, Ex. 3, but she did not comply with Rule 15(a)
26 of the Federal Rules of Civil Procedure, which establishes the requirements for a
plaintiff to amend her Complaint.

27¹⁸ *See* Renewed Motion.

28¹⁹ *See generally* Opposition.

1 lies in the federal courts.” *Syngenta*, 537 U.S. at 33. As such, a defendant may
2 remove a civil action in which either (1) a federal question exists; or
3 (2) complete diversity of citizenship between the parties exists and the amount
4 in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331 & 1332. “Complete
5 diversity” means that “each defendant must be a citizen of a different state from
6 each plaintiff.” *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234
7 (9th Cir. 2008). When the litigants are entities, diversity jurisdiction depends
8 on the form of the entity. *See, e.g., Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-
9 96 (1990) (finding that an unincorporated association such as a partnership has
10 “the citizenships of all of its members”). Similarly, a limited liability company
11 is a “citizen of every state of which its owners/members are citizens.” *Johnson*
12 *v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). In
13 contrast, a corporation is a citizen only of (1) the state where its principal place
14 of business is located; and (2) the state in which it is incorporated. *See* 28
15 U.S.C. § 1332(c)(1).

16 The right to remove is not absolute, even when original jurisdiction exists.
17 In other words, the removing defendant bears the burden of establishing that
18 removal is proper. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th
19 Cir. 2006) (noting the “longstanding, near-canonical rule that the burden on
20 removal rests with the removing defendant”); *Gaus v. Miles, Inc.*, 980 F.2d 564,
21 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction
22 means that the defendant always has the burden of establishing that removal is
23 proper.” (quotation marks omitted)). Any doubts regarding the existence of
24 subject matter jurisdiction must be resolved in favor of remand. *See id.*
25 (“Federal jurisdiction must be rejected if there is any doubt as to the right of
26 removal in the first instance.”).

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III. ANALYSIS

Mendoza argues that the Court must remand this action to Orange County Superior Court because her addition of Russell Follmer as a party defendant “defeats complete diversity.”²⁰ The Court disagrees.

First, because a Scheduling Order has been entered in this case, any request to amend a pleading must be treated as a request to amend the Scheduling Order under Rule 16. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). Under Rule 16(b), amendment is appropriate “only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b). Because Mendoza did not seek the Court’s consent to amend her Complaint, her amendment is improper.

12 Second, even if Mendoza had sought permission to amend her Complaint,
13 the Court would not have permitted her to add Follmer as a defendant. When a
14 plaintiff seeks to add a non-diverse defendant after a case has been removed to
15 federal court, the court “may deny joinder, or permit joinder and remand the
16 action to the State court.” 28 U.S.C. § 1447(e). In general, a court should deny
17 joinder when the plaintiff’s damages “could be fully satisfied by the other
18 defendants” and when the plaintiff “could still proceed separately against [the
19 non-diverse defendant] in state court,” such that “no injustice would occur” if
20 joinder is denied. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998).
21 A court should also deny joinder when the circumstances of the desired joinder
22 suggest that the plaintiff merely seeks to destroy diversity, which may occur in
23 cases in which the plaintiff knew of the non-diverse defendant’s identity when
24 the plaintiff commenced the action yet declined to add the defendant until after
25 the action was removed to federal court. See, e.g., *3WL, LLC v. Master*

28 || 20 Renewed Motion 7:22-23.

1 *Protection, LP*, 851 F. App'x 4, 7 (9th Cir. 2021) (discussing such a belated
2 attempt to add a non-diverse defendant).

3 Because Mendoza's claims against Follmer are premised entirely upon his
4 role as a supervisor for Costco, if Mendoza prevails in this case, she can recover
5 all of her money damages from Costco without adding Follmer as a defendant.
6 Mendoza may also pursue her claims against Follmer in state court, if she
7 desires. Thus, the Court could preclude Mendoza from adding Follmer as a
8 defendant without causing any injustice. *See Newcombe*, 157 F.3d at 691.
9 Moreover, in view of the history of this action and Mendoza's admission that
10 she knew Follmer's identity before she commenced this action, the Court has
11 little doubt that Mendoza's attempt to add Follmer is motivated by her desire to
12 avoid federal jurisdiction, rather than Follmer's indispensability. As such, the
13 request to add Follmer as a defendant—had Mendoza made it—would be
14 denied.

15 Finally, the Court is unpersuaded that Russell Follmer is the Doe
16 defendant who Mendoza incorrectly sued as Jimmy Johnson. As the Court
17 noted in its prior Order, Mendoza argued that Jimmy Johnson was the owner or
18 manager of the La Habra Costco location until it became clear that no person
19 named Jimmy Johnson, or any variation thereof, has ever worked at that Costco
20 location.²¹ Then, Mendoza proposed that the Costco manager may have instead
21 been named "Russ."²² Now that Costco has confirmed that a person named
22 Russ *did* work at that Costco location, Mendoza asserts that her hunch was
23 confirmed: "Russ" Follmer and Jimmy Johnson are one and the same.

24 The Court is unconvinced. As Mendoza concedes, she knew Follmer's
25 identity *before* she filed the First Motion, yet she remained steadfast in her belief
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27 ²¹ *See Order.*

28 ²² *See id.*

1 that Jimmy Johnson was a separate and distinct person until it became clear that
2 Jimmy Johnson was not a viable non-diverse defendant.²³ Only at that time—
3 and apparently in response to Costco’s initial disclosures, which identified
4 “Russ” as “the store employee believed to have taken the incident report”²⁴—
5 did Mendoza decide that Jimmy Johnson may have actually been named
6 “Russ.”²⁵ But while “Russ” exists, he has little in common with the warehouse
7 manager previously identified as Jimmy Johnson.²⁶ Indeed, although Mendoza
8 attempts to point out similarities between the two Costco employees, those
9 similarities relate entirely to characteristics and actions that Mendoza first
10 ascribed to Jimmy Johnson *after* Costco ascribed those characteristics and
11 actions to Follmer.²⁷ For those reasons, the Court is unpersuaded that Follmer
12 is the Doe defendant previously identified as Jimmy Johnson, and Mendoza’s
13 attempt to manufacture a non-diverse defendant out of any available Costco
14 employee remains, as it was in her First Motion, unavailing.

15 Accordingly, Mendoza’s Renewed Motion is **DENIED**.

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18 ²³ See generally First Motion; see also Joint Rule 26(f) Report (the
19 “Rule 26(f) Report”) [ECF No. 22] (listing “Russ” as the “store employee
believed to have taken the incident report”).

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21 ²⁴ See Rule 26(f) Report.

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23 ²⁵ See generally Mendoza’s Supplemental Brief.

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25 ²⁶ See generally Opposition (explaining that Follmer was not a warehouse
manager, that he lacked actual knowledge of the alleged condition of the
warehouse prior to Mendoza’s fall, that he learned of the spill because Mendoza
reported it to him, and that he arrived at the scene after the spill had been
cleaned).

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27 ²⁷ Compare Rule 26(f) Report (listing “Russ” as the “store employee
believed to have taken the incident report”) with Mendoza’s Supplemental Brief
2:5-9 (suggesting for the first time that the store manager identified as Jimmy
Johnson was the person who prepared the incident report).

IV. DISPOSITION

For the foregoing reasons, the Court hereby **ORDERS** that Mendoza's instant Renewed Motion [ECF No. 36] is **DENIED**.

IT IS SO ORDERED.

Dated: August 20, 2025

J.W. Holcomb